

REMARKS

Applicant has added claims 19-22 in order to claim the species shown in figures 3, 5, 7 and 7 respectively. As a result the claims read on the species as follows:

claim 19 reads only on the species of figures 2-4;
claim 20 reads only on the species of figure 5;
claim 21 reads only on the species of figure 6;
claim 22 reads only on the species of figure 7;
claim 6 is generic to the species of figures 5, 6 and 7;

All the remaining claims 1-5 and 7-18 are generic to all the species.

Applicant has elected the species of figure 6 and therefore the examiner is required to examine claims 1-18 and 20.

Applicant respectfully reminds the examiner that if any of generic claims 1-5 and 7-18 are allowed then all the remaining claims 19, 21 and 22 must also be examined.

The withdrawal of claims 10-18 is improper because they are generic to all the species. Applicant elected the species of figure 5 and all of claims 10-18 read on the species shown of figure 5. Figure 5 shows a detailed view of phase modifying element 14 of figure 1 in which the retarder plate 14b is connected to the polarization sensitive part 14a and the polarization sensitive part interfaces only with air as claimed in claim 20.

Claims 1-18 may not be restricted in an election of species because these claims are not mutually exclusive as required by MPEP 806.04(f).

The examiner's argument regarding the class and subclass of various claims is irrelevant for an election of species.

The examiner cannot arbitrarily withdraw some claims that read on the elected species of figure 5 while examining other claims that read on the elected species. The examiner is required to examine all the claims in the application that read on the elected species. Claims 1-18 and 20 read on the elected species.

Claim 10 has been changed to independent form by explicitly showing all the limitations of claim 1 that were already incorporated in claim 10.

In response to the rejection of claims 1-6 and 9 under 35 USC 103(a) for allegedly being unpatentable over US6687209 to Ota et. al. (herein Ota) in view of US6707607 to Hendriks et. al. (herein Hendriks), the applicant traverses the rejection.

More specifically, the combination does not suggest that the optical element includes "a part formed of polarization sensitive material ... having a surface ... comprising a phase structure" as in claims 1 and 10. The citations do not suggest providing a phase structure on a surface of a polarization sensitive material as in claims 1 and 10.

All the other claims are dependent on one of claims 1 and 10 and are thus allowable for at least the same reasons.

Applicant specifically objects to the statement in the office action at page 5 lines 11-15, that "it is well known in the art that many lenses have annular zones with non-periodic phase structures especially when comatic aberration needs to be removed from the objective lens.

Also one of ordinary skill in the art would have known that a structure with relatively large field tolerance is a good thing." The examiner should provide a citation to support this statement such as a citation to a handbook commonly used by those skilled in the art.

In addition, Hendriks is not prior art under 103(c), because this application was filed after 11/29/99 and all the claims of Hendriks were owned by the same assignee of all the claims of the present application at the time of the invention.

The claims are definite and distinguished from the citations and Applicant respectfully requests the allowance of all claims.

The Commissioner is hereby authorized to credit any overpayment or charge any fee (except the issue fee) including fees for any required extension of time, to Account No. 14-1270.

Respectfully submitted,

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